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10 Attorneys for Plaintiff  
11 BERTHA JOHNSON

12 \* *Defendants' counsel listed after the caption*

13 UNITED STATES DISTRICT COURT  
14 FOR THE NORTHERN DISTRICT OF CALIFORNIA

15 BERTHA JOHNSON,

16 Plaintiff,

17 v.

18 99¢ ONLY STORES, a corporation;  
19 1931 SAN PABLO PARTNERS, LLC;  
20 and DOES 1-10, Inclusive,

21 Defendants.

Case No. C11-04596 NC

Civil Rights

**CONSENT DECREE AND  
[PROPOSED] ORDER AS TO  
INJUNCTIVE RELIEF ONLY**

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CONSENT DECREE & ORDER AS  
TO INJUNCTIVE RELIEF ONLY  
Case No. C11-04596 NC

1 Attorneys for Defendant  
2 1931 SAN PABLO PARTNERS, LLC

3 1. Plaintiff BERTHA JOHNSON ("Plaintiff") filed a Complaint in this  
4 action on September 16, 2011 to obtain recovery of damages for her discriminatory  
5 experiences, denial of access, and denial of her civil rights, and to enforce  
6 provisions of the Americans with Disabilities Act of 1990 ("ADA"), 42 U.S.C.  
7 §§ 12101 *et seq.*, and California civil rights laws against Defendants 99¢ ONLY  
8 STORES and 1931 SAN PABLO PARTNERS, LLC (together sometimes  
9 "Defendants"), relating to the condition of Defendants' public accommodations as  
10 of April 12, 2010, and continuing. Plaintiff has alleged that Defendants violated  
11 Title III of the ADA and sections 51, 52, 54, 54.1, 54.3, and 55 of the California  
12 Civil Code, and sections 19955 *et seq.* of the California Health & Safety Code by  
13 failing to provide full and equal access to their facilities at 1931-1941 San Pablo  
14 Ave., Berkeley, California (the "Store").

15 2. Plaintiff and Defendants (together sometimes the "Parties") hereby  
16 enter into this Consent Decree and Order for the purpose of resolving injunctive  
17 relief aspects of this lawsuit without the need for protracted litigation. Issues of  
18 damages and attorneys' fees, costs, and expenses will be the subject of further  
19 negotiations and litigation if necessary.

**JURISDICTION:**

3. The Parties to this Consent Decree and Order agree that the Court has jurisdiction of this matter pursuant to 28 U.S.C. section 1331 for alleged violations of the Americans with Disabilities Act of 1990, 42 U.S.C. sections 12101 *et seq.* and pursuant to supplemental jurisdiction for alleged violations of California Health & Safety Code sections 19955 *et seq.*; Title 24, California Code of Regulations; and California Civil Code sections 51, 52, 54, 54.1, 54.3, and 55.

4. In order to avoid the costs, expense, and uncertainty of protracted litigation, the Parties to this Consent Decree and Order agree to entry of this Consent Decree and Order to resolve all claims regarding injunctive relief raised in the Complaint filed with this Court. Accordingly, the Parties agree to the entry of this Order without trial or further adjudication of any issues of fact or law concerning Plaintiff's claims for injunctive relief.

WHEREFORE, the Parties to this Consent Decree hereby agree and stipulate to the Court's entry of this Consent Decree and Order, which provide as follows:

**SETTLEMENT OF INJUNCTIVE RELIEF:**

5. This Order shall be a full, complete, and final disposition and settlement of Plaintiff's claims against Defendants for injunctive relief that have arisen out of the subject Complaint.

1           6.       The Parties agree and stipulate that the corrective work will be  
2 performed in compliance with the standards and specifications for disabled access  
3 as set forth in the California Code of Regulations, Title 24-2, and Americans with  
4 Disabilities Act Accessibility Guidelines, unless other standards are specifically  
5 agreed to in this Consent Decree and Order.  
6

7                   a)       **Remedial Measures:** Except as otherwise provided herein, the  
8 corrective work agreed upon by the Parties to be performed at the Store is set forth  
9 in **Attachment A** (a draft report by Plaintiff's access consultant, Karl Danz), and  
10 **Attachment B** (Cover Sheet, Site Plan, and Details by Kava Massih Architects,  
11 dated November 1, 2011). Mr. Danz' report that is **Attachment A** and the Cover  
12 Sheet, Site Plan, and Details by Kava Massih that are **Attachment B** are attached  
13 and incorporated herewith. Defendants agree to undertake all of the respective  
14 remedial work as set forth therein, except as otherwise provided in this Paragraph  
15 No. 6. **Attachment B** specifically covers Item Nos. 1.001, 3.001-3.009, and 3.011  
16 in **Attachment A**. Defendant 1931 SAN PABLO PARTNERS, LLC agrees to  
17 complete all of the work detailed in **Attachment B**. Defendant 99¢ ONLY  
18 STORES agrees to complete all of the work detailed in **Attachment A** other than  
19 that identified in Item Nos. 1.001, 2.008, 2.108, and 3.001-3.011 therein, and with  
20 the following further exceptions and modifications:  
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1           (1) With regard to Item No. 1.006, instead of the work proposed in  
2 **Attachment A**, 99¢ ONLY STORES will, in its sole and exclusive discretion,  
3 either (a) add a sign to the column as described in **Attachment A** or (b) relocate  
4 the freezer to an accessible location.  
5

6           (2) With regard to Item No. 1.003, instead of the work proposed in  
7 **Attachment A**, 99¢ ONLY STORES will (a) install signage (which shall be  
8 compliant with the ADA) in four locations in the Store interior stating, "If you  
9 require assistance with any merchandise, please notify one of our friendly team  
10 99er's," and (b) will educate and train employees at the Store with respect to the  
11 stocking of merchandise in the public sales area of the Store, about (i) the  
12 difficulties that customers with disabilities may have in reaching merchandise and  
13 the Store policy of assisting customers with merchandise upon request, (ii) what  
14 "reach ranges" are under Title 24, California Code of Regulations, sections  
15 1118B.5 and 1118B.6, and ADAAG sections 308.2 and 308.3, and (iii) the Store  
16 policy that, when reasonably possible in light of the conditions at the store (e.g.,  
17 available shelf space), merchandise should be stocked within reach of customers,  
18 including those with disabilities.  
19

20           b) **Timing of Injunctive Relief:** Defendants will submit plans  
21 for all corrective work requiring permits to the appropriate governmental agencies  
22 within 30 days of the entry of this Consent Decree by the Court. Defendants will  
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1 commence work within 30 days of receiving approval from the appropriate  
2 agencies. Defendant 1931 SAN PABLO PARTNERS, LLC will complete all work  
3 described in **Attachment B** by October 15, 2012. All other work described in this  
4 Consent Decree and Order will be completed by July 27, 2012. In the event that  
5 unforeseen difficulties prevent Defendants from completing any of the agreed-  
6 upon injunctive relief, Defendants or their counsel will notify Plaintiff's counsel in  
7 writing within 15 days of discovering the delay. Plaintiff will have thirty (30) days  
8 to investigate and meet and confer, and to approve the delay by stipulation or  
9 otherwise respond to Defendants' notice. If the Parties cannot reach agreement  
10 regarding the delay within an additional fifteen days, Plaintiff may seek  
11 enforcement by the Court. Defendants or their counsel will notify Plaintiff's  
12 counsel when the corrective work is completed, and in any case will provide a  
13 status report to Plaintiff's counsel no later than 120 days from the entry of this  
14 Consent Decree.

15  
16 c) Defendants will notify Plaintiff in writing at the end of 120  
17 days from the Parties' signing of this Consent Decree and Order as to the current  
18 status of agreed-to injunctive relief, and every 90 days thereafter until all access is  
19 provided. If Defendants fail to provide injunctive relief on the agreed upon  
20 timetable and/or fail to provide timely written status notification, and Plaintiff files  
21 a motion with the Court to obtain compliance with these terms, Plaintiff reserves  
22

1 the right to seek additional attorneys' fees for any compliance work necessitated by  
2 Defendants' failure to keep this agreement. If the Parties disagree, such fees shall  
3 be set by the Court.  
4

5  
6 **DAMAGES, ATTORNEYS' FEES, LITIGATION EXPENSES, AND**  
7 **COSTS:**

8 7. The Parties have not reached any agreement regarding Plaintiff's  
9 claims for damages, attorneys' fees, litigation expenses, and costs. These matters  
10 will be the subject of future negotiation or litigation as necessary. The Parties  
11 jointly stipulate and request that the Court not dismiss the case in its entirety as  
12 these issues remain unresolved.  
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16 **ENTIRE CONSENT DECREE AND ORDER:**

17 8. This Consent Decree and Order and **Attachments A & B** constitute  
18 the entire agreement between the signing Parties on the matters of injunctive relief,  
19 and no other statement, promise, or agreement, either written or oral, made by any  
20 of the Parties or agents of any of the Parties that is not contained in this written  
21 Consent Decree and Order, shall be enforceable regarding the matters of injunctive  
22 relief described herein. This Consent Decree and Order applies to Plaintiff's claims  
23 for injunctive relief only and does not resolve Plaintiff's claims for damages,  
24 attorneys' fees, litigation expenses, and costs, which shall be the subject of further  
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1 negotiation and/or litigation. The Parties stipulate that all Parties request that the  
2 Court not dismiss the case in its entirety as issues of statutory damages, attorneys'  
3 fees, litigation expenses, and costs are still before the Court.  
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6 **CONSENT DECREE AND ORDER BINDING ON PARTIES AND**  
7 **SUCCESSORS IN INTEREST:**

8 9. This Consent Decree and Order shall be binding on Plaintiff,  
9 Defendants, and any successors-in-interest. Defendants have a duty to so notify all  
10 such successors-in-interest of the existence and terms of this Consent Decree and  
11 Order during the period of the Court's jurisdiction of this Consent Decree and  
12 Order.  
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15 **MUTUAL RELEASE AND WAIVER OF CIVIL CODE SECTION 1542 AS**  
16 **TO INJUNCTIVE RELIEF ONLY:**

17 10. Each of the Parties to this Consent Decree and Order understands and  
18 agrees that there is a risk and possibility that, subsequent to the execution of this  
19 Consent Decree and Order, any or all of them will incur, suffer, or experience  
20 some further loss or damage with respect to the lawsuit that is unknown or  
21 unanticipated at the time this Consent Decree and Order is signed. Except for all  
22 obligations required in this Consent Decree and Order, the Parties intend that this  
23 Consent Decree and Order apply to all such further loss with respect to the lawsuit,  
24 except those caused by the Parties subsequent to the execution of this Consent  
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1 Decree and Order. Therefore, except for all obligations required in this Consent  
2 Decree and Order, this Consent Decree and Order shall apply to and cover any and  
3 all claims, demands, actions, and causes of action by the Parties to this Consent  
4  
5 Decree with respect to the lawsuit, whether the same are known, unknown, or  
6 hereafter discovered or ascertained, and the provisions of Section 1542 of the  
7 California Civil Code are hereby expressly waived. Section 1542 provides as  
8  
9 follows:

10 **A GENERAL RELEASE DOES NOT EXTEND TO**  
11 **CLAIMS WHICH THE CREDITOR DOES NOT**  
12 **KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
13 **FAVOR AT THE TIME OF EXECUTING THE**  
14 **RELEASE, WHICH IF KNOWN BY HIM OR HER**  
15 **MUST HAVE MATERIALLY AFFECTED HIS**  
16 **SETTLEMENT WITH THE DEBTOR.**

17 This waiver applies to the injunctive relief aspects of this action only and does not  
18 include resolution of Plaintiff's claims for damages, attorneys' fees, litigation  
19 expenses, and costs.

20 11. Except for all obligations required in this Consent Decree and Order –  
21 and exclusive of Plaintiff's referenced continuing claims for damages, statutory  
22 attorneys' fees, litigation expenses, and costs – each of the Parties to this Consent  
23 Decree and Order, on behalf of each, their respective agents, representatives,  
24 predecessors, successors, heirs, partners, and assigns, releases and forever  
25 discharges each other Party and all officers, directors, shareholders, subsidiaries,  
26 joint venturers, stockholders, partners, parent companies, employees, agents,

1 attorneys, insurance carriers, heirs, predecessors, and representatives of each other  
2 Party, from all claims, demands, actions, and causes of action of whatever kind or  
3 nature, presently known or unknown, arising out of or in any way connected with  
4 the lawsuit.  
5

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7 **TERM OF THE CONSENT DECREE AND ORDER:**  
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9 12. This Consent Decree and Order shall be in full force and effect for a  
10 period of eighteen (18) months after the date of entry of this Consent Decree and  
11 Order by the Court, or until the injunctive relief contemplated by this Order is  
12 completed, whichever occurs later. The Court shall retain jurisdiction of this  
13 action to enforce provisions of this Consent Decree and Order for eighteen (18)  
14 months after the date of entry of this Consent Decree and Order by the Court, or  
15 until the injunctive relief contemplated by this Order is completed, whichever  
16 occurs later.  
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21 **SEVERABILITY:**

22 13. If any term of this Consent Decree and Order is determined by any  
23 court to be unenforceable, the other terms of this Consent Decree and Order shall  
24 nonetheless remain in full force and effect.  
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**SIGNATORIES BIND PARTIES:**

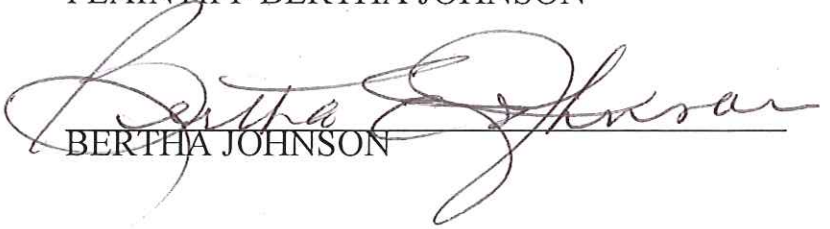
14. Signatories on the behalf of the Parties represent that they are authorized to bind the Parties to this Consent Decree and Order. This Consent Decree and Order may be signed in counterparts and a facsimile signature shall have the same force and effect as an original signature.

**END OF PAGE.**

**SIGNATURES CONTINUE ON THE NEXT PAGE AND ORDER IS AT  
THE END OF THE DOCUMENT.**

1 Dated: 6/11, 2012

PLAINTIFF BERTHA JOHNSON

2  
3   
4 BERTHA JOHNSON

5 Dated: 6/11, 2012

DEFENDANT 99¢ ONLY STORES


6 By: 

7 Print name: Doug Digison

8 Title: AVP CONST. & STORE DESIGN

9  
10  
11 Dated: 6/11, 2012

DEFENDANT 1931 SAN PABLO PARTNERS,  
LLC

12  
13 By: 

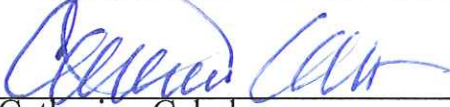
14 Print name: ALI R. KASHANI

15 Title: Member

16  
17 APPROVED AS TO FORM:

18 DATED: 6/11, 2012

LAW OFFICES OF PAUL L. REIN

19  
20 By:   
21 Catherine Cabalo  
22 Attorneys for Plaintiff  
BERTHA JOHNSON

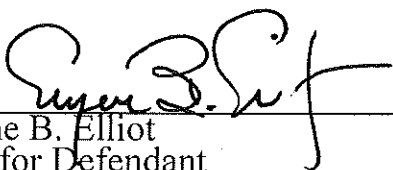
23 DATED: June 11, 2012

GREENWALD, PAULY, FOSTER &  
MILLER, P.C.

24  
25 By:   
26 Brian C. Coolidge  
27 Attorneys for Defendant  
99¢ ONLY STORES

1  
2 DATED: 6.11, 2012

**BERTRAND, FOX & ELLIOT**

3  
4 By:   
5 Eugene B. Elliot  
6 Attorneys for Defendant  
7 1931 SAN PABLO PARTNERS, LLC  
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**ORDER**

Pursuant to stipulation, and for good cause shown, IT IS SO ORDERED.

Dated: June 13, 2012

  
Honorable Nathanael M. Cousins  
United States Magistrate Judge